



New South Wales

Security Industry Amendment Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Security Industry Act 1997* (the **principal Act**) as follows:

- (a) to provide that the Commissioner of Police may, in determining whether the grant or renewal of a licence under the principal Act would be contrary to the public interest, have regard to any criminal intelligence report or other criminal information held in relation to the applicant or licensee,
- (b) to make it clear that the Commissioner may approve persons or organisations to provide training, assessment and instruction in connection with licence conditions under the principal Act that require the undertaking of training, assessment and instruction by a licensee while the licence is in force,
- (c) to provide that the Commissioner must refuse an application to renew a licence if the Commissioner is satisfied that, if the applicant were applying for a new licence, the application would be required to be refused,
- (d) to provide that the Commissioner may suspend a licence for a period of 60 days without the licensee being given an opportunity to be heard,
- (e) to ensure that criminal intelligence reports or other criminal information before NCAT can be withdrawn and protected against disclosure,
- (f) to provide that the privilege against self-incrimination does not excuse a person who is required to furnish records or information to police and other enforcement officers, or to answer questions under the principal Act from furnishing that information or those records or from answering those questions,

(g) to make other amendments of a minor, administrative or consequential nature.
The Bill also amends the *Security Industry Regulation 2016* in the manner outlined in Schedule 2.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Schedule 1 Amendment of Security Industry Act 1997 No 157

Schedule 1 [1] extends references to the provision of training and instruction in relation to security activities so that they refer also to providing assessment in relation to those activities.

Schedule 1 [4] enables the Commissioner, in determining whether the grant or renewal of a licence would be contrary to the public interest, to have regard to any criminal intelligence report or other criminal information held in relation to the applicant.

Schedule 1 [5] provides that the Commissioner must refuse an application to renew a licence if the Commissioner is satisfied that, if the applicant were applying for a new licence, the application would be required by the principal Act to be refused. The amendment replaces the current discretion to refuse an application for renewal and aligns the renewal provision with section 26 (1A) of the principal Act which requires automatic revocation of a licence in such circumstances.

Schedule 1 [8] and [25] are law revision amendments consequential on the enactment of the *Government Sector Employment Act 2013*.

Schedule 1 [10] restates, for consistency of language with the principal Act, an existing condition that requires the holder of a master licence to obtain the approval of the Commissioner before providing persons to carry on a security activity with a dog. **Schedule [1] 11** is a consequential amendment.

Schedule 1 [12] deletes a provision that makes it a condition of certain class 1 licences that the licensee must not carry on the security activity authorised by the licence with a dog. The provision is unnecessary because section 11 (3) of the principal Act already provides that the use of a dog in carrying on security activities is not authorised by the class 1 licences concerned.

Schedule 1 [13] provides that the Commissioner is not required to give a licensee an opportunity to be heard before the Commissioner decides to suspend the licence for a period of up to 60 days. The amendment also provides that the period of suspension may be extended for a further period of not more than 60 days by a further notice.

Schedule 1 [14] makes it clear that the Commissioner's power to revoke a licence on certain grounds (namely, that if the licensee were applying for a licence the application would be required to be refused) is not discretionary.

Schedule 1 [15] makes it clear that the Commissioner may approve persons or organisations to provide training, assessment and instruction not only for the purposes of the requirements relating to an application for a licence but also in connection with the licence conditions under the principal Act that require the undertaking of training, assessment and instruction by a licensee while the licence is in force. **Schedule 1 [2], [3], [6], [7] and [9]** are consequential amendments.

Schedule 1 [16] and [17] provide that, in NCAT hearings for the administrative review of licensing decisions by the Commissioner under the principal Act, the protection against disclosure of criminal intelligence reports or other criminal information will apply in relation to any criminal intelligence report or other criminal information that the Commissioner is relying on in relation to the reviewable decision. The amendments ensure that in NCAT hearings the Commissioner can provide criminal intelligence reports and other criminal information, in addition to what was used in making the reviewable decision, in the knowledge those reports or information will be protected from disclosure.

Schedule 1 [18] provides that if NCAT, in hearing an application for the administrative review of a licensing decision by the Commissioner under the principal Act, considers that any information in a criminal intelligence report or other criminal information relied on by the Commissioner has not been properly identified as such, NCAT must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by NCAT in its determination of the application. Any information that is withdrawn by the Commissioner must not be disclosed to any person or taken into consideration by NCAT in determining the application.

Schedule 1 [19] makes it clear that the offence of providing false information or particulars extends to records that are required to be provided under the principal Act.

Schedule 1 [21] and [22] enable police and other enforcement officers to require a person to attend at any specified place and time (rather than at a place and time nominated by the person) to answer questions in connection with an investigation of a suspected contravention of the principal Act.

Schedule 1 [23] inserts provisions relating to requirements to furnish records and information to police and other enforcement officers, and to answer questions, under the principal Act. Self-incrimination is not an excuse from such a requirement, however any information or records furnished or answer given by a natural person is not admissible in evidence against the person in criminal proceedings (except proceedings for certain offences under the principal Act) if the person objected at the time that it might incriminate the person. The amendment also requires persons to be warned that not complying with a requirement by police and other enforcement officers under Part 3B of the principal Act is an offence. **Schedule 1 [20]** is a consequential amendment that deletes a similar provision.

Schedule 1 [24] makes it clear that any action by the Commissioner to suspend or revoke a licence as a consequence of an order by a court that the licence be suspended is to be taken under section 25 or 26 of the principal Act which provide for the suspension or revocation of a licence by the Commissioner.

Schedule 1 [26] updates the provision relating to the issuing of penalty notices for offences under the principal Act.

Schedule 1 [27] updates the manner in which documents under the principal Act may be served.

Schedule 1 [28] enables the Commissioner, for the purposes of proceedings under the principal Act, to give certificate evidence in relation to the approval of persons or organisations to provide training, assessment and instruction.

Schedule 1 [29] preserves existing approvals by the Commissioner in relation to the provision of training, assessment and instruction under the principal Act.

Schedule 2 Amendment of Security Industry Regulation 2016

Schedule 2 [2] provides that the Commissioner may, in revoking a licence on the grounds that it would be contrary to the public interest for the person to whom it is granted to continue to hold it, have regard to any criminal intelligence report or other criminal information held in relation to the licensee. The amendment also provides that the Commissioner is not required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any such criminal intelligence report or other criminal information. **Schedule 2 [1]** is a consequential amendment that ensures consistency in language with the principal Act and Regulation.

Schedule 2 [3] and [4] are consequential on the amendments made by Schedule 1 [3] and [15] to the proposed Act.



New South Wales

Security Industry Amendment Bill 2017

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New South Wales

Security Industry Amendment Bill 2017

No. , 2017

A Bill for

An Act to amend the *Security Industry Act 1997* to make further provision in relation to the licensing and regulation of persons in the security industry; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Security Industry Amendment Act 2017*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Security Industry Act 1997 No 157	1
[1] Sections 6 (2B) and 12 (3)		2
	Insert “, assessment” after “training” wherever occurring.	3
[2] Section 15 Restrictions on granting licence—general suitability criteria		4
	Omit “requisite training, assessment and instruction” from section 15 (1) (d).	5
	Insert instead “training, assessment and instruction that is approved”.	6
[3] Section 15 (2)–(2B)		7
	Omit the subsections.	8
[4] Section 15 (6)		9
	Insert “or whether the grant of the licence would be contrary to the public interest” after “the applicant” where firstly occurring.	10 11
[5] Section 17 Renewal of licence		12
	Omit “may refuse” from section 17 (4). Insert instead “must refuse”.	13
[6] Section 17 (7)		14
	Omit “any requisite training, assessment or instruction”.	15
	Insert instead “such approved training, assessment and instruction as may be”.	16
[7] Section 17 (8)		17
	Omit the subsection.	18
[8] Section 18 Investigation of licence and renewal applications		19
	Omit section 18 (7) (b). Insert instead:	20
	(b) a Public Service employee,	21
[9] Sections 21A (1) and 23E		22
	Insert “approved” before “training” wherever occurring.	23
[10] Section 23 Special conditions—master licences		24
	Insert at the end of the section:	25
	(2) It is a condition of every master licence that the master licensee must not provide persons to carry on a security activity with a dog except with the approval of the Commissioner.	26 27 28
[11] Section 23D Special conditions—dog handling security services		29
	Omit the section.	30
[12] Section 23F Special conditions—class 1A, 1B, 1C, 1E or 1F licensee not to use dog		31
	Omit the section.	32
[13] Section 25 Suspension of licence		33
	Omit section 25 (1). Insert instead:	34
	(1) The Commissioner may, if satisfied that there may be grounds for revoking a licence, suspend the licence, by notice served on the licensee, for a period of	35 36

	not more than 60 days specified in the notice, commencing on service of the notice.	1 2
(1A)	The notice is:	3
	(a) to state that the licence is suspended and the reasons for suspending it, and	4 5
	(b) to request that the licensee provide the Commissioner with reasons why the licence should not be revoked.	6 7
(1B)	The Commissioner is not required to give a licensee an opportunity to be heard before suspending the licence under this section.	8 9
(1C)	The Commissioner may, by further notice served on a licensee during the period in which the licence is suspended under this section, extend the period of suspension of the licence for a further period of not more than 60 days specified in the notice.	10 11 12 13
[14]	Section 26 Revocation of licence	14
	Omit “For the purpose of determining whether a licence should be revoked under subsection (1A)” from section 26 (5).	15 16
	Insert instead “For the purposes of subsection (1A)”.	17
[15]	Section 27A	18
	Insert after section 27:	19
27A	Provision of approved training, assessment and instruction	20
(1)	The Commissioner may approve persons or organisations to provide, for the purposes of sections 15 (1) (d), 17 (7), 21A and 23E, training, assessment and instruction that is of a kind approved, and to a standard required, by the Commissioner.	21 22 23 24
(2)	The approval of any such person or organisation by the Commissioner:	25
	(a) is subject to such conditions with respect to the provision of training, assessment and instruction by the person or organisation as may be imposed by the Commissioner, and	26 27 28
	(b) may be suspended or revoked at any time by the Commissioner.	29
(3)	A person or organisation approved by the Commissioner under this section must comply with any conditions imposed by the Commissioner under subsection (2).	30 31 32
	Maximum penalty:	33
	(a) in the case of a corporation—100 penalty units, or	34
	(b) in the case of an individual—50 penalty units.	35
[16]	Section 29 Right to seek administrative review from Civil and Administrative Tribunal	36
	Omit “any decision to refuse to grant a licence, to renew a licence or to revoke a licence that was made on the ground of the applicant not being a fit and proper person” from section 29 (3).	37 38 39
	Insert instead “a decision referred to in subsection (1)”.	40
[17]	Section 29 (3) (a)	41
	Omit “referred to in section 15 (6), 17 (5) or 26 (5)”.	42

[18] Section 29 (4) and (5)	1
Insert after section 29 (3) (following the note):	2
(4) If the Tribunal considers that information contained in a criminal intelligence report or comprising other criminal information has not been properly identified as such, the Tribunal must ask the Commissioner whether the Commissioner wishes to withdraw the information from consideration by the Tribunal in its determination of an application.	3 4 5 6 7
(5) Information that is withdrawn by the Commissioner must not be:	8
(a) disclosed to any person, or	9
(b) taken into consideration by the Tribunal in determining an application.	10
[19] Section 33 Misrepresentation and related offences	11
Insert “, records” after “information” in section 33 (2) (b).	12
[20] Section 39L Obstruction etc	13
Omit section 39L (2).	14
[21] Section 39Q Power of enforcement officers to require answers and record evidence	15
Omit “if attendance at that place is reasonably required in order that the questions can be properly put and answered” from section 39Q (3).	16 17
[22] Section 39Q (4)	18
Omit the subsection.	19
[23] Part 3B, Division 3	20
Insert after Division 2:	21
Division 3 General	22
39R Provisions relating to requirements to furnish records or information or answer questions	23 24
(1) Warning to be given on each occasion	25
A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.	26 27 28
(2) Self-incrimination not an excuse	29
A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.	30 31 32 33
(3) Information or answer not admissible if objection made	34
However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 33 (2) (b) or 39L (1) (b)) if:	35 36 37 38
(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	39 40

(b)	the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.	1 2 3
(4)	Records admissible	4
	Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.	5 6 7
(5)	Further information	8
	Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:	9 10 11
(a)	that the record or information had to be furnished or the answer had to be given, or	12 13
(b)	that the record or information furnished or answer given might incriminate the person.	14 15
[24]	Section 40 Power of court to suspend licence	16
	Insert “under section 25 or 26” after “take action” in section 40 (3) (b).	17
[25]	Section 43 Delegation by Commissioner	18
	Omit section 43 (3) (b). Insert instead:	19
	(b) a Public Service employee, or	20
[26]	Section 45A	21
	Omit the section. Insert instead:	22
45A	Penalty notices	23
(1)	An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.	24 25
(2)	A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.	26 27
(3)	The <i>Fines Act 1996</i> applies to a penalty notice issued under this section.	28
	Note. The <i>Fines Act 1996</i> provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.	29 30 31 32
(4)	The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.	33 34
(5)	This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	35 36 37
(6)	In this section, authorised officer means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this section:	38 39 40
(a)	a police officer or any other member of the NSW Police Force,	41
(b)	a Public Service employee,	42
(c)	any other person prescribed by the regulations.	43

[27] Section 46	1
Omit the section. Insert instead:	2
46 Service of documents	3
(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:	4
(a) in the case of an individual—by personal delivery to the person,	5
(b) by post to the address specified by the person for the service of documents of that kind,	6
(c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,	7
(d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,	8
(e) by email to an email address specified by the person for the service of documents of that kind or by facsimile transmission to the facsimile number of the person,	9
(f) by any other method authorised by the regulations for the service of documents of that kind.	10
(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.	11
(3) In this section, <i>serve</i> includes give or send.	12
[28] Section 47 Certificate and other evidence	13
Insert after section 47 (1) (i):	14
(j) that a specified person or organisation was or was not, on a day or during a specified period, approved under section 27A,	15
(k) that specified conditions were or were not, on a day or during a specified period, imposed under section 27A with respect to the provision of training, assessment and instruction by a person or organisation approved under that section,	16
[29] Schedule 2 Savings and transitional provisions	17
Insert at the end of the Schedule, with appropriate Part and clause numbering:	18
Part Provisions consequent on enactment of Security Industry Amendment Act 2017	19
Existing approvals to provide training, assessment and instruction	20
(1) Any training, assessment and instruction approved by the Commissioner under section 15 (2) (a) is, if the approval was in force immediately before the repeal of section 15 (2) by the amending Act, taken to be approved under section 27A.	21
(2) Any person or organisation approved by the Commissioner under section 15 (2) (b) to provide training, assessment and instruction is, if the approval was in force immediately before the repeal of section 15 (2) by the	22

- amending Act, taken to be approved under section 27A to provide that training, assessment and instruction. 1
2
- (3) Any condition imposed under section 15 (2A) by the Commissioner with respect to the provision of training, assessment and instruction by a person or organisation is, if the condition was in force immediately before the repeal of that subsection by the amending Act, taken to be a condition imposed under section 27A. 3
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- (4) In this clause, **amending Act** means the *Security Industry Amendment Act 2017*. 8
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Schedule 2	Amendment of Security Industry Regulation 2016	1
[1] Clause 25 Revocation of licence—additional reasons: section 26 (1) (d)		2
Omit “is not in”. Insert instead “would be contrary to”.		3
[2] Clause 25 (2) and (3)		4
Insert at the end of clause 25:		5
(2) For the purpose of determining whether it would be contrary to the public interest for a person to continue to hold a licence, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the person that:		6
(a) is relevant to the activities carried on under the class of licence held by the person, or		7
(b) causes the Commissioner to conclude that improper conduct is likely to occur if the person continues to hold the licence, or		8
(c) causes the Commissioner not to have confidence that improper conduct will not occur if the person continues to hold the licence.		9
(3) The Commissioner is not, under the Act or any other Act or law, required to give any reasons for revoking a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information referred to in subclause (2).		10
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		12
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		14
		15
[3] Clause 43 Approval of persons or organisations providing approved training, assessment and instruction		20
Omit “section 15” from clause 43 (1). Insert instead “section 27A”.		21
		22
[4] Schedule 3 Penalty notice offences		23
Omit “Section 15 (2B)” wherever occurring. Insert instead “Section 27A (3)”.		24